

## *Chapter 10: Incurring Debt*



*In this section, we will discuss the following:*

- *The types of debt allowed for a library*
- *The procedures for establishment of a debt service fund.*

## PROCEDURE FOR ESTABLISHMENT OF A DEBT SERVICE FUND

In addition to complying with the budget requirements of Ind. Code § 6-1.1-17, a taxing unit must follow the steps for establishing a debt service fund. If the establishment is not in compliance with Indiana Code's and this section, a tax may not be levied in the ensuing year. After a political subdivision complies with the necessary requirements to establish a debt service fund, it may levy a property tax annually at the rate approved without further action. The tax levy must be advertised annually as other tax levies are advertised and adopted.

### **Types of Debt**

There are three types of debt a County can incur; they are:

- |                                     |               |
|-------------------------------------|---------------|
| (1) Bonds                           |               |
| a. General Obligation               | IC 6-1.1-20   |
| b. Park District                    | IC 31-10-3-24 |
| c. Special Taxing District          |               |
| i. Solid Waste Management Districts | IC 12-21-7    |
| ii. Sanitary District Bonds         | IC 36-9-25-27 |
| (2) Leases                          | IC 36-1-10    |
| (3) Public Works Project Loans      | IC 36-1-12    |

### **Bonds**

Bonds are governed by the state statute I.C. 6-1.1-20. The definition of bonds is:

Sec. 1. For purposes of this chapter, the term "bonds" means any bonds or other evidences of indebtedness payable from property taxes for a controlled project, but does not include:

- (1) notes representing loans under IC 36-2-6-18, IC 36-3-4-22, IC 36-4-6-20, or IC 36-5-2-11 which are payable within five (5) years after issuance;
- (2) warrants representing temporary loans which are payable out of taxes levied and in the course of collection;
- (3) a lease;
- (4) obligations; or
- (5) funding, refunding, or judgment funding bonds of political subdivisions.

### **Leases**

Leases are governed by the state statute IC 36-1-10. The following are excerpt from the code:

IC 36-1-10-1

Application of chapter:

Sec. 1. (a) Except as provided in subsection (b), this chapter applies to:

- (1) political subdivisions and agencies of political subdivisions that determine to acquire structures, transportation projects, or systems by lease or lease-purchase;
- (2) a convention and visitor bureau established under IC 6-9-2 that

determines to acquire a visitor center by lease or lease purchase; and

(3) a convention and visitor commission established by IC 6-9-11 that determines to acquire a sports and recreation facility by lease or lease purchase.

(b) This chapter does not apply to:

(1) the lease of library buildings under IC 36-12-10, unless the library board of the public library adopts a resolution to proceed under this chapter instead of IC 36-12-10;

(2) the lease of school buildings under IC 21-5;

(3) county hospitals organized or operating under IC 16-22-1 through IC 16-22-5;

(4) municipal hospitals organized or operating under IC 16-23-1;

or

(5) boards of aviation commissioners established under IC 8-22-2.

### IC 36-1-10-2

#### Definitions

Sec. 2. As used in this chapter “Leasing agent” means the board or officer of a political subdivision or agency with the power to lease structures.

“Parking facility” refers to a parking facility as defined in IC 36-9-1.

“Structure” means:

(1) a building used in connection with the operation of a political subdivision; or

(2) a parking facility.

The term includes the site, the equipment, and appurtenances to the building or parking facility.

“System” means:

(1) a computer (as defined in IC 36-8-15-4);

(2) a communications system (as defined in IC 36-8-15-3(1)); or

(3) mobile or remote equipment that is coordinated by or linked with a computer or communications system.

“Transportation project” means a road or highway project jointly undertaken by the Indiana department of transportation and any county through which a toll road project under IC 8-15-2 passes. A transportation project must be located within an area described in IC 8-15-2-1(a)(3) or IC 8-15-2-1(a)(4).

### IC 36-1-10-7

Lease of structures, systems, or transportation projects; petition; need

Sec. 7. A leasing agent may not lease a structure, transportation project, or system, unless:

(1) the leasing agent received a petition signed by fifty (50) or more taxpayers of the political subdivision or agency, and

(2) the fiscal body of the political subdivision determines, after investigation, that the structure, transportation project, or system is needed.

## **Public Works Project Loan**

A public works project is defined in IC 36-1-12 as:

Sec. 2. As used in this chapter, "public work" means the construction, reconstruction, alteration, or renovation of a public building, airport facility, or other structure that is paid for out of a public fund or out of a special assessment. The term includes the construction, alteration, or repair of a highway, street, alley, bridge, sewer, drain, or other improvement that is paid for out of a public fund or out of a special assessment. The term also includes any public work leased by a political subdivision under a lease containing an option to purchase.

IC 36-1-12-3 further defines the requirements for a public works project:

Sec. 3. (a) The board may purchase or lease materials in the manner provided in IC 5-22 and perform any public work, by means of its own workforce, without awarding a contract whenever the cost of that public work project is estimated to be less than one hundred thousand dollars (\$100,000). Before a board may perform any work under this section by means of its own workforce, the political subdivision or agency must have a group of employees on its staff that is capable of performing the construction, maintenance, and repair applicable to that work. For purposes of this subsection, the cost of a public work project includes the actual cost of materials, labor, equipment, rental of equipment, and a reasonable rate for use of trucks and heavy equipment owned, and all other expenses incidental to the performance of the project.

(b) When the project involves the rental of equipment with an operator furnished by the owner, or the installation or application of materials by the supplier of the materials, the project is considered to be a public work project and subject to this chapter. However, an annual contract may be awarded for equipment rental and materials to be installed or applied during a calendar or fiscal year if the proposed project or projects are described in the bid specifications.

(c) A board of aviation commissioners or an airport authority board may purchase or lease materials in the manner provided in IC 5-22 and perform any public work by means of its own workforce and owned or leased equipment, in the construction, maintenance, and repair of any airport roadway, runway, taxiway, or aircraft parking apron whenever the cost of that public work project is estimated to be less than fifty thousand dollars (\$50,000).

(d) Municipal and county hospitals must comply with this chapter for all contracts for public work that are financed in whole or in part with cumulative building fund revenue, as provided in section 1(c) of this chapter. However, if the cost of the public work is estimated to be less than fifty thousand dollars (\$50,000), as reflected in the board minutes, the hospital board may have the public work done without receiving bids, by purchasing the materials and performing the work by means of its own workforce and owned or leased equipment.

(e) If a public works project involves a structure, an improvement, or a facility under

the control of a department (as defined in IC 4-3-19-2(2)), the department may not artificially divide the project to bring any part of the project under this section.

### **Designation of Debt**

There are two designations of debt. They are

- (1) Controlled projects
- (2) Uncontrolled projects

Bonds and leases are defined as controlled or uncontrolled in I.C. 6-1.1-20-1.1, which reads:

As used in this chapter, “controlled project” means any project financed by bonds or a lease except

- (1) A project for which the political subdivision reasonably expects to pay:
  - (A) debt service; or
  - (B) lease rentalsfrom funds other than property taxes that are exempt from the levy limitations of I.C. 6-1.1-18.5 or I.C. 6-1.1-19. A project is not a controlled project even though the political subdivision has pledged to levy property taxes to pay the debt service or lease rentals if those other funds are insufficient.
- (2) A project that will not cost the political subdivision more than two million dollars (\$2,000,000)
- (3) A project that is being refinanced for the purpose of providing gross or net present value savings to taxpayers.
- (4) A project for which bonds were issued or leases were entered into before January 1, 1006, or where the state board of tax commissioners has approved the issuance of bonds or the execution of leases before January 1, 1006.
- (5) A project that is required by a court order holding that a federal law mandates the project.

### **Controlled Projects**

The procedures for incurring debt for a controlled project are set out in IC 6-1.1-20, which reads as follows:

Sec. 3.1 A political subdivision may not impose property taxes to pay debt service or lease rentals without completing the following procedures:

- (1) The proper officers of a political subdivision shall:
  - a. Publish notice in accordance with IC 5-3-1; and
  - b. Send notice by first class mail to any organization that delivers to the officers, before January 1 of that year, an annual written request for such notices; of any meeting to consider adoption of a resolution or an ordinance making a preliminary determination to issue bonds or enter

- into a lease and shall conduct a public hearing on a preliminary determination before adoption of the resolution or ordinance.
- (2) When the proper officers of a political subdivision make a preliminary determination to issue bonds or enter into a lease, the officers shall give notice of the preliminary determination by:
    - a. Publication in accordance with IC 5-3-1; and
    - b. First class mail to the organizations described in subdivision (1)(b).
  - (3) A notice under subdivision (2) of the preliminary determination of the political subdivision it issue bonds or enter into a lease must include the following information:
    - a. The maximum term of the bonds or lease
    - b. The maximum principal amount of the bonds or the maximum least rental for the lease
    - c. The estimated interest rates that will be paid and the total interest costs associated with the bonds or lease.
    - d. The purpose of the bonds or lease
    - e. A statement that any owners or real property within the political subdivision who want to initiate a petition and remonstrance process against the proposed debt service or lease payments must file a petition that complies with subdivision (4) and (5) not later than thirty (30) days after publication in accordance with IC 5-3-1.
  - (4) After notice is given, a petition requesting the application of a petition and remonstrance process may be filed by the lesser of:
    - a. One hundred (100) owners of real property within the political subdivision; or
    - b. Five percent (5%) of the owners of real property within the political subdivision.
  - (5) The state board of accounts shall design and, upon request by the county auditor, deliver to the county auditor of the county auditor's designated printer the petition forms to be used solely in the petition process described in this section. The county auditor shall issue to an owner or owners of real property within the political subdivision the number of petition forms requested by the owner or owners. Each form must be accompanied by instructions detailing the requirements that:
    - a. The carrier and signers must be owners of real property
    - b. The carrier must be a signatory on a least one (1) petition
    - c. After the signatures have been collected, the carrier must swear or affirm before a notary public that the carrier witnessed each signature; and
    - d. Govern the closing date for the petition period.Persons requesting forms may not be required to identify themselves and may be allowed to pick up additional copies to distribute to other property owners.
  - (6) Each petition must be verified under oath by at least one (1) qualified petitioner in a manner prescribed by the state board of accounts before the petition is filed with the county auditor under subdivision (7).

- (7) Each petition must be filed with the county auditor not more than thirty (30) days after publication under subdivision (2) of the notice of the preliminary determination.
- (8) The county auditor must file a certificate and each petition with:
  - a. The township trustee, if the political subdivision is a township, who shall present the petition or petitions to the township board; or
  - b. The body that has the authority to authorize the issuance of the bonds or the execution of a lease, if the political subdivision is not a township;within fifteen (15) business days of the filing of the petition requesting a petition and remonstrance process. The certificate must state the number of petitioners that are owners of real property within the political subdivision. If a sufficient petition requesting a petition and remonstrance process is not filed by owners of real property as set forth in this section, the political subdivision may issue bonds or enter into a lease by following the provisions of law relating to the bonds to be issued or lease to be entered into.

After all these procedures have been completed, the political subdivision must seek approval from the Department of Local Government Finance as required by IC 6-1.1-20-3.2(7):

- (6) After a political subdivision has gone through the petition and remonstrance process set forth in this section, the political subdivision is not required to follow any other remonstrance or objection procedures under any other law (including section 5 of this chapter) relating to bonds or leases designed to protect owners of real property within the political subdivision from the imposition of property taxes to pay debt service or lease rentals. However, the political subdivision must still receive the approval of the department of local government finance required by IC 6-1.1-18.5-8 or IC 6-1.1-19-8.

### **Uncontrolled Projects**

Political subdivisions are not required to publish any notices before petitioning the Local Government Tax Control Board to appear for a recommendation for projects that are considered as uncontrolled. They must, however, adopt a resolution approving the project and the financing.

### **Local Government Tax Control Board (LGTCB)**

The taxing unit must petition the Local Government Tax Control Board to be placed on the agenda for the next meeting, per IC 6-1.1-18.5-8(a)(2). The taxing unit must appear at the meeting to present project and answer questions by the LGTCB members. The members will then make a recommendation to approve, modify or deny a debt service fund to finance the project to the Commissioner of the Department of Local Government Finance. The Commissioner will review the minutes of the meeting and the

submitted documentation and make a final decision on whether to approve, modify or deny a debt service fund to finance the project. The department of local government finance shall render a decision within three (3) months after the date it receives a request for approval. However, the department of local government finance may extend this three (3) month period by an additional three (3) months if, at least ten (10) days before the end of the original three (3) month period, the department sends notice of the extension to the executive officer of the civil taxing unit. A civil taxing unit may petition for judicial review of the final determination of the department of local government finance under this section. The petition must be filed in the tax court not more than forty-five (45) days after the department enters its order under this section.

### **Approved Indebtedness**

If the Department of Local Government Finance approves a bond issuance or execution of a lease for your county, then you must submit a final amortization schedule on or before December 31<sup>st</sup> of the current year for a tax rate to be imposed in the ensuing year. Based on the final amortization schedule, the amount needed to cover the bond or lease rental payment will be “worked” in during the certification of budgets, tax rates and tax levies for the county as a separate debt service fund.



# *Summary*

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